

1 Daniel D. Maynard, No. 009211
2 **MAYNARD CRONIN ERICKSON &**
3 **CURRAN, P.L.C.**
4 3200 North Central Avenue, Suite 1800
Phoenix, Arizona 85012
(602) 279-8500
dmaynard@mmcec.com

6 Daniel R. Drake, No.003781
7 **DRAKE LAW, PLC**
8 4340 East Indian School Road, Suite 21-113
Phoenix, Arizona 85018
(602) 881-5341
drakelawplc@gmail.com

10 Attorneys for Defendant
11

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF ARIZONA**

14 United States of America,
15 Plaintiff/Respondent,
16 v.
17 Abdul Malik Abdul Kareem,
18 Defendant/Movant.

2:15-cr-00707-SRB
MOTION FOR COURT TO
EVALUATE GOVERNMENT
ATTORNEYS' POTENTIAL
CONFLICT OF INTEREST
(ORAL ARGUMENT)

20 Defendant, Abdul Malik Abdul Kareem (“Mr. Kareem”) files this motion
21 requesting the court to evaluate the government attorneys’ potential conflict of interest
22 in this case as it impacts on the presentation of information at sentencing and their
23 refusal to timely and freely produce information material and necessary to the defense.
24 That information pertains to the government’s investigation of an alleged murder-for-
hire-plot and its determination it would not file criminal charges based on the
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1 allegations. Further, Mr. Kareem moves the court to review in camera information
2 concerning the government's investigation of allegations that surfaced on or about May
3 23, 2018 that Mr. Kareem wanted to kill the prosecutors and defense lawyers in this
4 case. Then it can make its own determination on what should be produced and when.
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6 This motion is supported by the attached Memorandum of Points and Authorities.

7 Excludable delay under 18 U.S.C § 3161(h) will not occur as a result of this
8 motion or of an order based thereon.
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10 **MAYNARD CRONIN ERICKSON
& CURRAN, P.L.C.**

11 By /s/Daniel D. Maynard
12 Daniel D. Maynard
13 3200 North Central Avenue, Ste. 1800
14 Phoenix, Arizona 85012
15 Attorneys for Defendant/Appellant

DRAKE LAW, PLC

By /s/Daniel R. Drake
Daniel R. Drake
4340 E Indian School Road
Suite 21-113
Phoenix, Arizona 85078
Attorneys for Defendant/Appellant

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17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **A. Background.**

19 According to information disclosed by the government (the "Disclosure" filed as
20 Exhibit 1 under seal), Mr. Kareem allegedly wanted to kill the attorneys on his case,
21 both prosecution and defense. Federal authorities learned about the allegations on or
22 about May 23, 2018 (Disclosure 006, 029). Two special agents ("SA") from the Bureau
23 of Alcohol, Tobacco, Firearms, and Explosives ("ATF") made arrangements with
24 authorities at FCI Florence and interviewed inmates who were the alleged sources of
25 the allegations. They interviewed the first inmate ("CS 1") on May 24, 2018, and he
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1 referred them to a second inmate (“CS 2”) with whom he was “close” and who
2 allegedly knew the substance of the allegations. (Disclosure 007).

3 The ATF special agents interviewed CS 2 on May 30, 2018 and recorded the
4 interview. (Disclosure 009). The government has not disclosed the recording of the
5 interview. According to a synopsis of the interview that has been provided, CS 2
6 provided the ATF agents with an email string of messages between Mr. Kareem and
7 one of his defense attorneys. (Disclosure 010). The ATF special agents read the stolen
8 emails.
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11 According to the Disclosure, the ATF conducted an investigation regarding the
12 allegations. On May 25, 2018, ATF SA McKone submitted a cover letter to the
13 Warden at FCI Florence together with a subpoena to obtain and review Mr. Kareem’s
14 electronic communications (Disclosure 031, 061, 063): telephone calls and emails made
15 and received at Florence FCI where he was being held. SA McKone reviewed the
16 email traffic and saw “nothing of note in the emails.” (Disclosure 031). Apparently,
17 these included emails to and from counsel; however, none of them are attached to the
18 report and the government has not disclosed those emails. SA McKone reviewed
19 recorded phone calls from April 4, 2018, through April 20, 2018, and reported nothing
20 of note regarding the allegations. (Disclosure 032). On June 13, 2018, SA Bazin,
21 another ATF agent, reviewed recorded phone calls from February 1, 2018, through
22 February 16, 2018, and from April 22, 2018, through April 25, 2018. (Disclosure 044).
23 SA Bazin reported that he “didn’t note any pertinent information relating to this
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1 ongoing investigation.” (Disclosure 044). The government has not disclosed the
2 recordings of the phone conversations reviewed by SAs McKone and Bazin and it is not
3 clear whether they listened to phone conversations between Mr. Kareem and his
4 lawyers.

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6 On June 4, 2018, FBI SA Julio Alberto Hernandez drafted an FBI Electronic
7 Communication and copied Jon-Todd A. Baker (The FBI Agent handling Mr. Kareem’s
8 case). (Disclosure 048). SA Hernandez noted that a review of 65 phone calls and the
9 email traffic provided by BOP personnel “did not reveal derogatory information
10 pertaining to a pending terrorist attack or a murder for hire for plot.” (Disclosure 048).
11 Again it appears that this may include listening to conversations between Mr. Kareem
12 and his lawyers as those calls are listed among the 65 calls.
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15 The ATF forwarded the reports on the interviews with CS 1 and CS 2 to the
16 Colorado Springs Resident Agency of the FBI, which received those reports on June 8
17 and June 11, 2018. (Disclosure 048).

18
19 On June 21, 2018 FBI SA Julio Alberto Hernandez interviewed one individual at
20 FCI Florence. (Disclosure 047). The redactions in the FD-302 regarding that interview
21 prevent identification of the individual as either CS 1 or CS 2. The individual
22 confirmed the substance of previously reported conversations with Mr. Kareem. The
23 individual indicated he was willing to assist in the investigation, but he wanted “his
24 sentence reduced.” (Disclosure 047).

1 More than a year later the FBI was still investigating, according to the
2 Disclosure. TFO Gregory Alan Young, a law enforcement officer assigned to a federal
3 task force interviewed an inmate at FCI Florence. He learned that, according to the
4 inmate, Mr. Kareem had “left his mother with \$40,000, and that was the money he
5 would use to pay for it [the hit].” (Disclosure 018). According to the inmate, Mr.
6 Kareem was going to explain the plan to his mother. (Disclosure 018).

7 TFO Young obtained and reviewed recorded phone calls Mr. Kareem made at
8 FCI Florence in 2019. (Disclosure 021). After reviewing the recording of an August 2,
9 2019, from Mr. Kareem to his mother, TFO Young observed that the mother “seems
10 elderly and unwitting.” (Disclosure 021). He summarized an August 12, 2019, call
11 from Mr. Kareem to his mother by noting “Mother on Welfare, food stamps, and
12 housing assistance. Has only \$200.00 for food during the month.” “Mother has no
13 vehicle and takes public transportation.” (Disclosure 022). In a call between Mr.
14 Kareem and his mother on November 24, 2019, TFO Young noted that Mr. Kareem’s
15 mother said, “she has no money for traveling and hopes someone else will pay for it.”
16 (Disclosure 026). The government has not disclosed the recorded conversations.

17 According to the Disclosure, on December 19, 2019, TFO Young conducted an
18 interview of an unnamed individual in connection with a proffer of the individual’s
19 information. The attorney for the individual listened in to the interview. (Disclosure
20 014). At the outset of the interview TFO Young read a proffer letter from AUSA David
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1 Tonini setting forth the terms for the interview. (Disclosure 014). The government has
2 not disclosed the proffer letter.

3 **B. Conflict of Interest of Prosecutors.**

4 Government counsel has indicated that they were “walled off” from the
5 investigation and prosecuting decisions regarding the alleged murder for hire plot.
6 Presumably that was to remove any personal bias or animus of the prosecutors in this
7 case as alleged victims influencing a potential decision to bring charges based on the
8 allegations. Now, those same alleged victims of the plot are proposing to use the raw
9 information provided by the two collaborating individuals interviewed in 2018 and a
10 third interviewed in 2019 to enhance Mr. Kareem’s sentence. Also, they are in charge
11 of disclosing information that might be material and helpful to the defense and have
12 refused to timely provide it to the defense.
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14 Pursuant to ER 3.8 Special Responsibilities of a Prosecutor, the prosecutor in a
15 criminal case shall:

16 (d) make timely disclosure to the defense of all evidence or information
17 known to the prosecutor that tends to negate the guilt of the accused or
18 mitigates the offense, and, in connection with sentencing, disclose to the
19 defense and to the tribunal all unprivileged mitigating information known
20 to the prosecutor except when the prosecutor is relieved of this
21 responsibility by a protective order of the tribunal.

22 The American Bar Association has set forth criminal justice standards for the
23 prosecution function. Standard 3-1.2(c) provides that a prosecutor should avoid an
24 appearance of impropriety in performing the prosecution function. In this case, the
25 government determined there is not enough evidence to charge Mr. Kareem with a new
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1 crime, yet the prosecutors, who are two of the alleged victims, plan to use this
2 incredible or insufficient evidence to enhance Mr. Kareem's sentence. Certainly this
3 lends an appearance of impropriety.

4 The investigators with ATF, the FBI and the US Attorney's Office in Colorado
5 that investigated these allegations indicate by their conduct that they do not believe the
6 allegations true or charges would have been filed. That determination was made based
7 on disbelief of the allegations without any input from Mr. Kareem. Therefore, the
8 alleged evidence from the three inmates should not be presented at Mr. Kareem's
9 sentencing and, if it is, it demonstrates bias or creates an appearance of impropriety by
10 the prosecutors on this case.

11 Standard 3-1.6(a) provides, in pertinent part:

12 A prosecutor should not use ... improper considerations, such as partisan
13 or political ***or personal considerations***, in exercising prosecutorial
14 discretion. A prosecutor should strive to eliminate implicit biases, and act
15 to mitigate any improper bias or prejudice when credibly informed that it
16 exists within the scope of the prosecutor's authority. (Emphasis added).

17 Clearly these prosecutors are biased against Mr. Kareem if they truly believe he plotted
18 to kill them. If they do not believe he plotted to kill them, then they should not be
19 attempting to admit the contested testimony of three inmates who are looking to get
20 time off their sentences.

21 Standard 3-1.4(a) provides in pertinent part:

22 In light of a prosecutor's public responsibilities, broad authority and
23 discretion, the prosecutor has a heightened duty of candor to the courts
24 and in fulfilling other professional obligations.

Standard 3-1.4(b) provides:

The prosecutor should not make a statement of fact or law, *or offer evidence, that the prosecutor does not reasonably believe to be true*, to a court, lawyer, witness, or third party, except for lawfully authorized investigative purposes. In addition, while seeking to accommodate legitimate confidentiality, safety or security concerns, a prosecutor should correct a prosecutor's representation of material fact or law that the prosecutor reasonably believes is, or later learns was, false, and should disclose a material fact or facts when necessary to avoid assisting a fraudulent or criminal act or to avoid misleading a judge or factfinder. (Emphasis added).

C. Conclusion.

The prosecutors in this case have failed to investigate their three inmate witnesses and provide the defense with relevant information on these three witnesses. It even discouraged the defense from investigating these witnesses. It wants defense counsel to sit idly by and await the good graces of the government attorneys. This court should review the information in the government's possession and, if relevant, require it to be turned over immediately and should investigate whether the prosecutors handling the case should be removed due to bias and an appearance of impropriety if they represent the government at the re-sentencing of Mr. Kareem.

RESPECTFULLY SUBMITTED this 22nd day of September, 2021.

**MAYNARD CRONIN ERICKSON &
CURRAN, P.L.C.**

By /s/Daniel D. Maynard

Daniel D. Maynard

3200 North Central Avenue, Ste. 1800

Phoenix, Arizona 85012

Attorneys for Defendant/Appellant

DRAKE LAW, PLC

By /s/Daniel R. Drake

Daniel R. Drake

4340 East Indian School Road

Suite 21-113

Phoenix, Arizona 85018

Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on September 22nd, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants: AUSA Joseph E. Koehler and AUSA Kristen Brook. Additionally, a copy was served upon Mr. Abdul Kareem by first class letter, postage prepaid, at:

Abdul Malik Abdul Kareem #44126-408
FCI Phoenix
Federal Correctional Institution
37910 N 45th Ave
Phoenix, AZ 85086

/s/Rosalie Mobley

Rosalie Mobley